

Case:22-10272, 02/15/2024, ID: 12860479, DktEntry: 45-1, Page 1 of 6  
In the Ninth Circuit Court of Appeals.

Nos. 22-10272

United States

v.

Edward Gaston

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U.S. COURT OF APPEALS

FEB 15 2024

FILED  
DOCKETED  
DATE  
INITIAL

Edward Charles Gaston by way of pro se petitions this honorable court to issue judgement in favor of defendant considering defenses pro se supplemental brief at docket entry 27 page 1 specifically reasserting the uncontested legal and constitutional challenges made in the sentencing record in district court document 173.

The government has acknowledged the defendants supplemental pro se brief as well as their deadline to respond and have failed to respond in a timely manner. See (Docket Entry 22) Page 3 of 6 paragraph 4.

1. the government does not contest that their original concession by default should have been treated as concessions.

see (document 173) page 4 lines 17-19. Defendant points out government failures And relays these failures should have been treated as concessions without rebuttal.

The record of defaults and or concessions by default are as follows;

Document 118 lines 17,18 defense first utilized the Ninth Circuits Thomas and Hunt case law.

See (document 119)-government opposition - government fails to even address Thomas and Hunt issues.

See (document 124)- defenses reply -defense again asserts there is no mandatory minimum see (page 1 lines 22-25) also asserting 0-20 penalty provision applied. (Page 4 lines 8,9)

See (page 3 lines 26- page 4 lines 1-12) for defense pointing out government failure to address Thomas and Hunt position.

(See hearing) court asks gov again for supplemental briefing specifically addressing Thomas and Hunt. (Docket 125) transcripts.

See (document 127) government supplemental brief - government failed to address Thomas and Hunt case law once again.

See (document 128) defendants reply brief (page 1) defendant points out government default another time.

(Page 2) lines 1-10 Defense explains Thomas standings and again claims 0-20 penalty provision.

See also (document 128) page 3 lines 1,2

For defenses calling for ruling of a government Concession for governments failure to address Thomas and hunt case law.

Though the court ruled in defendants favor

The court did not specifically rule on whether they accepted or declined the governments failure to respond as a concession. Neither did the government argue against a concession.

Accordingly the court should rule Judge Mueller abused her discretion by not declaring a concession by default and defendant should be sentenced to the 841 (a)(1) (b)(1)(c) 0-20 penalty provision. The court should stay execution until the remaining conflicts are resolved

There are additional matters forthcoming in this same respect. This one alone should snuff the governments appeal.

1. The government has also failed to contest to the defendants challenge to his criminal history I called by name of Edward Gaston asserted the **law of the land, constitutional law** see; (document 173) 1-ER-37 at 2-11.

THE DEFENDANT: "I was going to get one more thing on the record, your Honor. Sorry. I would say that I have no criminal history under the **Fifth Amendment** because California doesn't prosecute cases by mode of indictment and the Fifth Amendment says that no man shall be held to answer for an infamous or a capital crime except by mode of indictment. The **Tenth Amendment** says that anything contrary to the Constitution should be treated as though it does not exist.

So I would say that the Government's or the Court's or the probation's accounting of my criminal history is wrong.

The court also excepted my assertion as a legal position see; 1-ER-37 at 13-14

THE COURT: All right. I understand that is a legal position.

Furthermore it was the government who suggested that the recidivist enhancement Language should be stricken from the indictment instead of dismissing the indictment (document 84) page 3 at 7-11.

### **Fifth Amendment**

(1) No person shall be held to answer  
for a capital, or otherwise infamous crime,  
unless on a presentment or indictment of a Grand Jury,

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(2) except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;

(3) nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Considering clause number (1) Definition of infamous is a felony;

Defendant maintains that the government cannot hold him to answer for an infamous (Felony), crime unless on presentment or indictment of a grand jury. The alleged felony priors were not originally acquired by mode of an information or indictment of a grand jury then nor are they included in the indictment now to the extent that only one was previously incorporated in the indictment, it was the government who suggested that the recidivist enhancement language be stricken from the indictment

See (document 84) page 3 at 7-11

The second section of the Fifth Amendment

Shows that the framers carefully considered those situations in which persons should be excluded from the grand jury right.

Defendant has been held to answer 3 times for alleged infamous (felony) crimes that he has not been indicted for even once and the third clause in the fifth amendment is violated.

#### The Clauses of Magna Carta

"No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land.

"To no one will we sell, to no one will we deny or delay right or justice."

The government now for the second time has failed to contend against defendants **legal, constitutional law.**

**This court should remand and order the district court to sentence me as if I had no criminal history.**

The governments failure to rebut these legal standings should be treated as either the governments agreement or default, to the extent that the government may argue it was a preservation of rights, this legal assertion was reincorporated in defendants supplemental pro se brief at (docket entry 27) page 1 with the same result of silence. To the extent that this court may disagree, this quarrel is not the courts. The court should rule in favor of the defendant. If the court does not rule in my favor, the government and the court must concede there be no need for

the office of United States attorneys in criminal proceedings against the citizens of the United States and it should be terminated.

#### Brady violation

The government also did not contest the fact that they still had not provided defense with the Brady material neither did the government contest to the defendants claims to the government utilizing an actual child in the investigation even until today defense has not received any indication that the government has sought to validate or discredit my assertions see; (Document 173) 1-ER-32 at 23-ER-1-33 entire page.

The government had ample opportunity to rebut my assertions but chose only to address allegedly that they had not received another discovery request see; (1-ER-44) At 6-11. However I have a copy of this request.

See; "exhibit A" attached dated 6-3-2022.

The governments four year attempt to withhold the discovery was in fact a failed attempt as the court ordered the government to produce it, ruling defense had demonstrated its pertinent value. Also ruling federal rules of criminal procedure demanded it. See; (document 106) The court did not rule whether this was in fact a Brady violation or a due process violation under FRCP rule (5)(f) but it is a clear Brady violation and such as violative of the case laws incorporated in the due process protection order at (document 98).

Partial pertinent materiality which the withheld discovery contained was somewhat mentioned at (document 173) 1-ER-16-at 23 through 1-ER-21-at 1-3.

Defendant was struggling in his marriage, became homeless, needed money, Informant was wife's friend, nephew's girlfriend, the government had knowledge of this.

Now the court did not explicitly rule whether or not there was a due process or Brady violation in the since of withheld discovery

However there are hints that this information was beneficial to sentencing see;

1-ER-19 at 10,11

THE COURT: All right. I think I understand that better now.

See 1-ER-20 at 7,8

THE COURT: All right. All right. This is helpful to me. I appreciate your being forthcoming.

There's enough here to demonstrate a discovery due process violation however there's more.

I reiterate the government still has not provided or sought out discovery even today.

When did the informant become an informant, why did the informant become an informant, what was the informant promised, did the informant have any convictions. This unprovided discovery alone hampers every species of entrapment.

The court should therefore make an explicit ruling that there was and is a due process Brady violation.

Defendant has resorted to uncontested legal and constitutional assertion at (docket entry 27 page 1) however I have most recently received transcripts 01/26/2024 and ask for an extension of time to address additional legal and constitutional standings related to due process I would also incorporate by reference the happenings that has taken place since the filing of my revised pro se motion to dismiss the indictment and include the procedural history which should include various forms of prejudice and prosecutorial misconduct I also need to request a copy of my revised motion to dismiss the indictment because I have requested this particular motion from both my district court and appellate court attorney with no response. I also have requested my appellate attorney to address the same issues which contain constitutional muster and she has decided against it. Defendant requests counsel to assist in the preparation of additional issues If one would be willing to adequately assist me I'm simply doing what I can do since apparently unknown attorneys have said "F" Me which could mean "F" me over or worse see; (document 166) page 24 of 31 at 19-23;

THE DEFENDANT: No. This is going concern about the letter that I also put in here that when discussing me notifying the Court on my own that apparently some other attorneys who seen me addressing the Court and said F me. So you know, it's like what do I -- at that point what do I do?

~~I ALSO believe I I ALSO state I have attempted to retrieve transcript(s) of prior state proceeding allegedly they were destroyed THERE ARE NO INDICTMENTS.~~  
Respectfully submitted,

Edward C. Lester

2-13-2024

I believe the details incorporated herein  
are true to the best of understanding.  
Signed under the penalty of perjury

Edward C. Lester  
2-13-2024

Notice of Events and Requested Evidence  
from Government.

To: A.U.S.A. Alexis Nelson-Klein

From: Edward Gaster Case No. 2:17-cr-00235-KJM

I declare that on 7-2-2016 CT#1 did attend my child's birthday party with their 2 year old child and that CT#1 did introduce their child to my child as cousin and me as their child's uncle and they did eat some of the birthday cake. That CT#1 did promise me a place to live. If the government claims no knowledge of these events they have an exonerative duty to learn of and disclose this information under Brady v. Maryland (1963). I would argue that such conduct amounts to outrageous government conduct and that the court should rule that it is absolutely impermissible to place a child in danger by allowing a government informant to utilize the child in the course of an investigation in order to gain trust, sympathy and friendship or to promote fraudulent representations and that the court should dismiss the indictment using its inherent supervisory powers in order to deter the illegal conduct.

Respectfully,  
Edward Gaster  
2-2-2027